



MAGISTRATES COURT of TASMANIA  
CORONIAL DIVISION



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## **Record of Investigation into Death (With Inquest)**

*Coroners Act 1995  
Coroners Rules 2006  
Rule 11*

**I, Olivia McTaggart, Coroner, having investigated the death of Jayden Craig Field**

**WITH AN INQUEST held in the Hobart Magistrates Court (Coronial Division)**

### **Hearing Dates**

18, 19, 20, 23, 24 and 25 February 2015, 4 and 25 March 2015, 10 and 15 June 2015

### **Counsel**

Counsel Assisting: G Hickman

Counsel for Mr Kimbinga: C Rainbird

### **Introduction**

Jayden Craig Field was born on 30 September 1994 and died on 24 November 2013. He was aged 19 years at the date of his death. His parents are Joanne Lisa Field and Craig Jeffrey Field. Mr Field passed away on 29 October 2015. Jayden lived at 65 Tingira Road, Blackmans Bay with his mother and her partner, Douglas MacDonald. His sister is Jenna Field. His step-siblings are Kiri and Aidan MacDonald. Jayden was a student at the TAFE College. Mrs Field described her son as funny, caring and loved by his family.

During the evening of 16 November 2013 he was out with three good friends. They were Sean Benjamin Ash-Williams ("Sean"), then aged 19 years; Jack Andrew Beadell ("Jack") then aged 18 years; Nicholas Aaron Cherry ("Nick"), then aged 19 years. I refer in this finding to the group collectively as "the boys", as that term was used in the evidence at inquest.

The boys were in the area of the Hobart waterfront and were consuming alcohol. In the early hours of the morning of Sunday 17 November 2013 they went together to the taxi rank at Salamanca Place.

At 2.19am on that morning a Yellow Cab Maxi Taxi, registration B18GD, driven by Lopez Kimbinga ("Mr Kimbinga"), picked up the four boys and proceeded to the Blackmans Bay area as requested. Mr Kimbinga did not previously know any of the boys.

Jayden lived at 65 Tingira Road, Blackmans Bay and it was intended that they all stay at Jayden's house that evening.

Once in Blackmans Bay, Mr Kimbinga was directed to travel up Jindabyne Road. As the taxi proceeded along Jindabyne Road, Nick, Jack and Sean alighted from the rear of the taxi. Some short time later Jayden exited from the rear of the taxi whilst it was moving.

Jack and Sean sustained minor injuries from alighting from the taxi. Jayden, tragically, suffered a severe head injury from which he did not recover.

On 24 November 2013 Jayden passed away at the Royal Hobart Hospital.

### **Legislation and principles to be applied**

My functions pertaining to this inquest and findings are governed by section 28 of the *Coroners Act 1995* which states:

*28. Findings, &c., of coroner investigating a death*

*(1) A coroner investigating a death must find, if possible –*

*(a) the identity of the deceased; and*

*(b) how death occurred; and*

*(c) the cause of death; and*

*(d) when and where death occurred; and*

*(e) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act 1999; and*

*(2) A coroner must, whenever appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers appropriate.*

*(3) A coroner may comment on any matter connected with the death including public health or safety or the administration of justice.*

*(4) A coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence.*

On 21 April 2015, the *Coroners Amendment Act 2015* repealed section 28(1)(f). This prescribed the requirement for a coroner to find the identity of any person who contributed to the cause of death. At the date of Jayden's death and at the time of the inquest a finding of contribution was a requirement. However, as that requirement was in the nature of a procedural provision, its repeal does not operate retrospectively and the determination of contribution is therefore no longer a

requirement for my finding; see my reasoning in *Pearce, Jasmine Rose 2015 TASC 75*.

### **Standard of proof**

The standard of proof in coronial inquests is the civil standard of the balance of probabilities. However, where the findings may reflect adversely on an individual, such as in this inquest, the standard is to be applied in accordance with the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336. In that case, Dixon J (as he then was) stated:

*“...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences...”*

I am required to apply the above principles in this finding.

### **Issues at inquest**

In the introduction, I recorded my findings, easily made on the evidence, in respect of the requirements under section 28(1)(a), (c), (d) and (e).

The following issues were identified as the focus of the inquest pertaining to the difficult issues of how death occurred, and appropriate comments and recommendations:

- (a) The circumstances as to how the four boys came to exit the taxi. In particular, three of the boys (not including Jayden) asserted that the taxi driver was directed to stop at Jindabyne Road and he did so. They asserted that once he stopped they started to alight. As they were alighting they state that the driver sped up, and, as Jayden was the last to alight, he was injured. Mr Kimbinga asserted that he did not slow or stop at all and kept travelling at about 40kmph and that the boys all alighted from the taxi whilst he was travelling at this speed; and
- (b) Issues surrounding the operation of the internal taxi camera footage, issues with the police investigation and the prevention of fare evasion generally.

### **Summary of Circumstances of death**

The evidence establishes the following facts surrounding Jayden’s death. These facts were not challenged and are established by ample evidence.

At around 7.50pm on 16 November 2013 Jayden and Sean caught a bus from Tingira Road, Blackmans Bay, into Hobart. They had with them a four litre cask of Sunnyvale wine that was inside of a backpack in their possession; some or most was consumed during the course of the evening. In town, they met up with Nick.

At around 9.40pm Nick was arrested outside the Observatory Nightclub in Murray Street. He was charged and bailed at 10.04pm in Hobart and was given police bail with a condition that he not enter the area of the Hobart waterfront. Nevertheless, Nick made his way back to Jayden and Sean near the Supreme Court at Salamanca Place. Jack also joined the group. The four boys decided to go back to Jayden's house, as Jayden was very intoxicated and had been vomiting.

At 2.18am the four boys were present at the Salamanca taxi rank. As captured on the taxi rank CCTV, Jayden, Nick, Sean and Jack failed to take the taxi sedan when at the front of the queue. Jayden attempted to enter this sedan and was violently pulled away and pushed up against the taxi rank shelter by Sean. Nick and Jack did not intervene. That taxi then left with other patrons.

The next taxi in line was the maxi taxi driven by Mr Kimbinga. All boys entered this vehicle. Jayden sat in the rear facing seat directly behind the driver. Jack entered the taxi and sat in the rear-facing seat directly behind the front seat. Nick entered the taxi and sat in a forward facing seat, opposite Jack. Sean entered the taxi and sat in a forward facing seat opposite Jayden. The taxi driver was in the driver's seat.

All four boys had been drinking heavily throughout the evening and were intoxicated to different degrees.

Mr Kimbinga was aged 35 years at the time and held a full Australian and taxi driver's licence.

During the journey on the Southern Outlet there was an incident involving at least some of the boys smoking a cigarette and Mr Kimbinga speaking to them about it, before the cigarette was put out.

The taxi made its way to Jindabyne Road, Blackmans Bay, with directions being given. The route taken by taxi, indicated by the correctly functioning GPS, was the Hobart waterfront, Davey Street, Southern Outlet, Channel Highway, Algona Road, Opal Drive, Kiama Place, Tingira Road, Roslyn Avenue and Jindabyne Road.

All four boys exited the taxi on Jindabyne Road. None of the boys were wearing seat belts in the taxi during the journey.

Nick Cherry pulled back the sliding door and exited the taxi first, followed by Jack, and Sean. Just prior to alighting from the vehicle, Sean was standing over Nick and Jack as shown on the taxi footage.

Nick sustained no injuries when exiting the taxi.

Jack sustained a cut to his wrist or palm of his hand.

Sean sustained bruising on his body and a cut to the back of his head when exiting the taxi.

A short time later and some distance away, Jayden then exited the taxi. He exited whilst the taxi was travelling at 41-48kmh, as shown by the speed analysis of Senior Constable Kelly Cordwell, crash investigator attached to Accident Investigation Services ("AIS"). The taxi GPS that was subsequently located and adduced in evidence corroborated the speed analysis. As Jayden exited he hit the roadway or footpath and in doing so hit the right side of his head and sustained serious injuries. He lost his shoes during the impact.

Mr Kimbinga turned the taxi around and stopped close by. He called emergency services, notified his taxi call centre, and activated his alarm.

An occupant of a nearby premises, David Nichols, assisted Jayden and called an ambulance. The ambulance was dispatched at 2.51am and arrived at the scene at 2.58am.

Prior to the ambulance arriving, Jack arrived at the scene.

Police officers, Constable Rebecca McIndoe and Constable Shane Leek, arrived at 3.03am, 5 minutes after the arrival of the ambulance.

Jayden was taken from the scene to the Royal Hobart Hospital by ambulance. He had sustained critical injuries.

Sean appeared at the scene after the ambulance left and about 45 minutes after the police officers arrived. Nick did not come to the scene at all.

Jack paid the fare, plus an extra \$18.00, to Mr Kimbinga in the presence of police officers.

Mr Kimbinga was breath tested and provided a negative reading to alcohol.

The police officers took Jack and Sean to Jack's house in Blackmans Bay. They then attended Jayden's address at 65 Tingira Road and located and notified Mrs Field of her son's condition.

The officers located Nick asleep on the floor of Jayden's residence and directed him to leave. They took Mrs Field to the hospital to be with Jayden.

Police took a statutory declaration within two hours of the incident from Mr Kimbinga. They later impounded the taxi. It was inspected by transport officers on 19 November 2013. Some minor defects were located but these did not contribute to the incident.

Nick, Sean and Jack met at a newsagency at Blackmans Bay later that morning and caught a bus to Hobart to attend the Hobart police station where they made statutory declarations regarding the incident.

A blood sample was taken from Jayden whilst at hospital indicating a blood/alcohol level of 0.168 grams of alcohol per 100 millilitres of blood.

An initial CT scan was conducted of Jayden's brain and this demonstrated severe traumatic haemorrhages and fracture of the skull base. The scan also showed that

he had suffered significant diffuse brain swelling with compression of vital brain structure. Despite decompression procedures, Jayden did not recover from his injuries.

He died on 24 November 2013.

After Jayden died he became an organ donor.

On 25 November 2013 Dr Donald Ritchey, forensic pathologist, conducted an autopsy upon Jayden. The autopsy revealed severe traumatic brain injuries including large volume subdural haematomas and diffuse subarachnoid haemorrhage involving the cerebral hemispheres. There were severe cortical brain contusions of the frontal and temporal lobes and there were lacerations of the frontal lobes.

Dr Ritchey determined the cause of death to be severe traumatic head injury. I accept Dr Ritchey's conclusion as to the cause of Jayden's death. I find that Jayden sustained the injuries causing death when his head impacted upon the surface of the roadway subsequent to his exit from the moving taxi.

Constable Timothy James, of Forensic Services, attended at and photographed the scene.

Constables Leek and McIndoe managed the scene and the collateral enquiries. They returned to the Hobart Police Station ("HPS") before the end of their shift and submitted an IDM report on the police database outlining matters that were observed or spoken about at the scene.

At 2.00pm on 17 November 2013 Constable Cordwell attended the scene and analysed the evidence to determine a speed estimate at the point where Jayden exited the vehicle. She completed that task.

Constable Leek took carriage of the coronial investigation and provided his report to the coroner on 23 May 2014.

The taxi footage shows that the boys were unrestrained in the vehicle. Nick, Sean and Jack were all charged with failing to wear their seat belt and those charges have been finalised in court.

The investigation of the matter continued until the inquest. Relevantly, in December 2014 GPS data for the taxi journey was obtained and consequently a further scene examination and recreation was conducted by Constable Cordwell.

The taxi footage did not operate correctly in accordance with the manufacturer's guidelines and prescribed standards. As a result the CCTV did not flow and jumped significant parts of the journey, in particular it did not show the boys alighting from the taxi. This impeded the investigation and the inquest.

Annual testing of the CCTV equipment in this taxi did not detect any errors, for either before this event or after. The testing was completed by the owner/operator of the taxi business, Roger Burdon.

There have been other instances where incorrectly working taxi footage has impeded police investigations.

There is compelling evidence to demonstrate that fare evasion is an issue for the taxi industry in Tasmania.

### **Conflict of evidence on central factual matters**

Prior to hearing evidence at inquest, the affidavits obtained revealed a conflict of crucial evidence regarding the taxi disembarkation process that could not be resolved without testing the evidence. On one hand, Mr Kimbinga swore that he did not slow down from a speed of about 40-50kmh and was travelling at such speed at the top of Jindabyne Road when the three boys jumped out of the taxi without warning and without paying him.

On the other hand, the three boys swore that the taxi stopped at the top of Jindabyne Road as directed to allow them to alight, and suddenly sped up as they were doing so without apparent reason. They denied that their intention was to evade the taxi fare and said they were attempting legitimately to alight with the intention of paying the driver once they were outside the taxi.

Therefore, before inquest and on the evidence as it stood in the investigation, a finding could not be made as to whether Jayden's fatal injuries occurred as part of a plan by all or some of the boys to alight from the taxi with an intention to avoid the fare. A finding also could not be made as to whether Mr Kimbinga accelerated quickly from an almost stationary speed with or without knowledge that the boys were alighting from the taxi. Similarly, a finding could not be made as to whether Mr Kimbinga in fact remained travelling at a constant speed on Jindabyne Road whilst the boys jumped out of his taxi.

In the context particularly of the requirement that existed at the time of inquest to find the identity of persons who contributed to Jayden's death, I determined that an inquest was required. The conflict must still be resolved for the purpose of determining how Jayden's death occurred in accordance with the requirement under s28(1)(b) of the *Coroners Act 1995*.

In finding the facts and resolving the conflict the following were the more important areas of focus:

- Credibility of the accounts of Mr Kimbinga and the three boys;
- What occurred at the taxi rank;
- The journey and route taken;
- Whether the taxi stopped or substantially slowed when the first three boys exited;
- Plans and payment for the taxi fare;
- What the first three boys did when they exited the taxi;
- Interior light activation on the taxi;
- Contact between boys after exit;
- Whether Jayden fell out or deliberately alighted;

- Mr Kimbinga's response to the three boys alighting and response to Jayden remaining in the taxi.

At inquest, Mr Kimbinga and the three boys gave evidence and were subjected to lengthy cross-examination. Their evidence was tested to the extent that it could realistically be, and each was given a full opportunity to respond to the forensic, police and eyewitness evidence.

I have received detailed submissions from counsel assisting, Ms Hickman, and Counsel for Mr Kimbinga, Mr Rainbird. Their factual analysis of the issues of credibility has been extremely helpful to me in this finding.

For the reasons that follow, I find that the four boys formed a plan, before they entered into the taxi, to evade the fare; that Mr Kimbinga was directed to stop at the top of Jindabyne Road near a gravel road that provided a quick escape from the road and also access to the rear of Jayden's house; that Mr Kimbinga did stop at the requested spot; that the three boys alighted in quick succession with no intention of paying Mr Kimbinga once outside; that Jayden remained in the taxi for between 10 and 17 seconds after the other boys alighted, before also deliberately alighting; that Mr Kimbinga accelerated after the three boys alighted and was travelling at about 43kmph when Jayden alighted and sustained fatal injuries from contact with the roadway; that Jayden alighted in accordance with the plan to evade the fare, and he also had no intention at any time of paying the fare.

### **Reliable, credible and objective evidence**

The reliable, credible and objective evidence that I accept, and which is the basis for the majority of the findings into the factual circumstances, is set out below in categories together with the reasons for accepting the evidence.

#### ***GPS Data***

I am satisfied that the taxi GPS was working correctly. The unchallenged evidence of Mr Murray Bell, IT Department Team Leader for Yellow Cabs, assists me in this conclusion. Additionally, the speeds recorded were consistent with the topography of the roads. The cartography was accurate. No errors were detected by the system.

The GPS data is also consistent with evidence of Mr Kimbinga regarding the route taken, and the evidence of Constable Cordwell who compared the GPS data to the data from the taxi footage. Importantly, the GPS data is consistent with Constable Cordwell's analysis of speed at the point of Jayden's exit from the taxi. Finally, the GPS speed data is consistent with the smoking stop on the Southern Outlet, and the slower speeds traversing known corners and at traffic lights.

The analysis of the GPS readings shows that:

- The average speed detected by the GPS of 6 km/h on Jindabyne Road, between Donohoe Garden and the gravel road (about 290 metres), correlates directly with the area of the boys exiting the taxi as given in evidence by Mr Kimbinga and as shown on the CCTV footage. It is consistent with their account that the taxi stopped and they got out and then the taxi started to accelerate away.

- At 2.38am, the taxi was travelling at an average speed of 31 km/h between Jindabyne Road roundabout and Donohoe Garden (an intersecting street about 270 metres further up Jindabyne Road);
- The taxi reached an average speed of 43 km/h between the gravel road and the driveway of 52 Jindabyne Road (this coinciding with the estimated position of where Jayden exited the vehicle as determined by Constable Cordwell);
- The taxi travelled further north to a point outside 54 Jindabyne Road and with an average speed of 48kmh.
- The speed of the taxi reduced to 7 km/h before it completes a three point turn at Bluewater Court.

### ***Taxi CCTV footage***

The evidence indicated that the camera system in the taxi was not operating in accordance with the 2008 camera standards set by the Department of State Growth as it was intended to do. The malfunction impeded this investigation. The door opening trigger event to increase capture rates did not operate. The duress alarm trigger event to increase capture rates did not operate. If the system had been operating, both the trigger points for the door opening and duress alarms would have captured all vital footage of the boys alighting in the prescribed standard time frames of capture. Forensic Officer, Constable Melanie Redburn, gave evidence that police encounter regular issues with taxi footage where the capture rates are not in accordance with standards and that investigations are consequently compromised due to time jumps, as in this case, where critical footage is not recorded.

Nevertheless, all of the evidence indicates that the camera operated to accurately depict what was recorded, at the correct time, although there should have been more comprehensive footage. The important events captured are as follows:

- 2.39.14 – the taxi side door open; internal light on; Nick seated and looking out, Jack seated and looking out; Sean standing over Nick and looking out; Jayden seated, holding onto the top of the driver's seat and looking forward towards the windscreen.
- 2.39.24 – Nick, Jack and Sean no longer in the taxi and Jayden still seated, holding onto the top of the seat and looking forward towards windscreen;
- 2.39.44 – Jayden has left the vehicle.

Based upon the footage, I find that the first three boys exited the taxi within a maximum 10 second period. Jayden exited between 10-17 seconds after the three boys. However, the actual exit of all four boys was not captured on the footage.

Transport Inspector Noel Clark inspected the taxi on 19 November 2013. Relevantly he found that the sliding door was not automatically linked to illumination of an interior light. He found that the only interior light that was operating was one that could only be switched on from the driver's position.

I conclude therefore that Mr Kimbinga must have turned on the interior light and that its activation was not as a result of an automatic illumination as a result of the opening of the sliding door.

In arriving at this conclusion, I accept Ms Hickman's thorough analysis of the footage contained in her submissions and find that the following occasions are relevant to show that the light is manually activated by Mr Kimbinga:

- When the taxi was stopped on the Southern Outlet the sliding door was not open and the interior light is illuminated as Mr Kimbinga turns in his seat to speak to the boys;
- When the sliding door was open just prior to the boys exiting the taxi on Jindabyne Road the light was illuminated;
- The light remained illuminated when Jayden was in the taxi alone;
- The light was off when Jayden was no longer in the taxi.

### ***Telephone records***

Records of telephone calls to and from the phone numbers of Nick, Sean, Jack and Jayden between 2.00am and 5.30am on 17 November 2013 formed part of the evidence at inquest.

The first call from Sean's phone after 2.40am, when the three boys exited the taxi, was at 2.47am to Jayden's phone. It was not answered and was one single call. Subsequently, there were many calls between them in the next hour. Many calls were to and from Sean's phone, with several unanswered.

Again, I am grateful for the analysis of the phone activity undertaken by Ms Hickman. I agree that the number of calls, and attempted calls and messages, are indicative of a state of panic on the part of the three boys. I make further comment in respect of the telephone activity further in this finding.

### ***Crash Investigation evidence***

The evidence of Constable Cordwell was compelling. Her original conclusion as to the speed of the taxi at the point of Jayden's exit was confirmed as a correct analysis when the GPS data subsequently became available. The substance of her evidence, delivered clearly and logically both in her statements and at inquest, was that:

- A driver travelling at 7 km/h at the point of the gravel road, with a slow reaction time, could have stopped in 5.07 metres and in 2.8 seconds;
- A driver travelling at 48 km/h at the gravel road, with a slow reaction time, could have stopped in 49.39 metres and in 4.92 seconds;
- The taxi, in fact, travelled 129 metres from the gravel road where the boys commenced alighting to where Jayden ultimately exited;
- Jayden exited the vehicle when it was travelling at 43 km/h, 17 metres north of the driveway of No 52;
- At a speed of 48km/h, and stopping distance of 49.39 metres a time of 4.92 seconds for a reasonable driver was required to stop. Therefore Mr Kimbinga still had over five seconds to bring that vehicle to a stop before Jayden exited;
- Nick, Jack and Sean's injuries upon alighting range from no injuries to quite severe injuries. This is indicative of each boy exiting at progressively higher speeds than the last. Sean's injuries are indicative of those seen when a vehicle is travelling at between 20-40 kmh. Senior Constable Cordwell stated that Nick had no injuries, Jack was winded and had a cut on his wrist, and Sean had significant injuries – a grazed elbow, shoulder, and hip consistent with sliding across bitumen. His head injury is consistent with being struck on a hard surface;
- Jayden's injuries were consistent with the type suffered by Sean but more serious. In this regard she noted that Jayden had the added aggravating factor of an 8 degree gradient as he struck the surface;

- Pedestrians are unable to remain balanced after 20 km/h, but that speed may be lessened due to effects of alcohol consumption;
- She observed a pole in the open door of the taxi on the footage. This identified the exit point in the area to the pole alongside the gravel road. This puts the taxi slowed or stopped just before the gravel road on the still uphill section as it levels out.

## **Other eyewitnesses and credible witnesses**

### ***Attending Police officers***

Constable McIndoe and Constable Leek gave evidence that they attended the scene of Jayden's injuries and made observations. They spoke to Mr Kimbinga, Jack, Sean and Nick. I accept their evidence as to what those persons said to them. Much of it was recorded in a police IDM report made later in the morning at HPS. I will deal with their evidence further in this finding. The main aspects of their evidence are the statements and behaviour of the three boys that strongly suggested that they intended to evade the taxi fare.

### ***David Nichols***

Mr Nichols was the resident of 52 Jindabyne Road who came to assist Jayden. He provided him with a sleeping bag and telephoned for the ambulance. He monitored Jayden's breathing, tried to talk to him, and rubbed his back. He stated that Mr Kimbinga was very distressed and seemed to struggle to communicate for help on his two way radio because of his emotional state.

He gave evidence that Jack arrived at the scene about five minutes later, walked to Jayden and then straight to Mr Kimbinga. He pointed at Mr Kimbinga and said words to the effect of *"this wouldn't have happened if you hadn't sped off."*

Jack had told him during the incident that they had offered to pay the fare by card but the taxi driver had said *"no"*. Mr Nichols stated that Jack told him they had had a big night and were *"pissed"*. However, Mr Nichols stated he did not notice any of the normal symptoms of intoxication with Jack, and he understood and responded in discussions. Jack stated that he had \$100 on him and could pay it (the fare) now.

Mr Nichols gave evidence that Jack was trying to ring one of his friends at a somewhat constant basis. He got through to someone and shortly after that another boy came down the road. Mr Nichols pointed out one of Jayden's shoes that was on the roadway to Constable Leek before he left the scene. He said he walked him to the rear of the police vehicle and pointed it out.

Mr Nichols was a most credible and articulate witness intent on assisting Jayden. I accept his evidence in full. He had an excellent memory of what was no doubt a confronting situation for him.

### ***Mr Bradley Eather***

Bradley knew Jayden, Nick, Sean and Jack. He ran into them at the Salamanca taxi rank that evening.

That was the second time he had ran into them that night. At the taxi rank, Nick approached him and a friend as they were getting in a taxi and asked them if he

could get a lift with them as he had no money. He was told “no” as he owed one of them money from a previous cab fare. I accept his unchallenged evidence.

***Witness X (name suppressed)***

Witness X first contacted police prior to Jayden’s death on his mother’s instigation. He has always been a reluctant witness. Witness X provided evidence of knowing Jayden, Nick and Sean prior to 17 November 2013, and of being friends with them before a falling out in 2013. The behaviour of Nick, in particular, towards him made him fearful of repercussions. His evidence was therefore provided under the pseudonym of Witness X and his evidence was completed via remote room viewing.

He presented well and there was no evidence of hesitation, evasiveness or deception. His recall appeared genuine.

He gave evidence of incidents of taxi fare evasion involving some of the boys prior to 17 November 2013. I note that Nick and Sean denied previous attempts to evade taxi fares.

The evidence was that one incident in which he was personally involved occurred in April 2013 and involved Jayden and Sean. They evaded a taxi by running through a half-built house in Kingston Heights Road. He nominated the area on a map when giving evidence.

Evidence from Kingston City Council located a newly built house at 7A Kingston Heights Road, within the location and timeframe nominated by Witness X in his evidence.

He gave evidence of another incident of being taken to premises in Flowerpot Crescent by Sean after he had evaded a taxi fare. This occurred before the AFL grand final when he had a good relationship with the boys. Witness X, although reluctant, provided cogent and plausible evidence. He was unshaken in all of his evidence and I am satisfied he was a witness of the truth.

**Evidence of Lopez Kimbinga, Nicholas Cherry, Sean Ash-Williams and Jack Beadell**

Below I set out the evidence of these important witnesses and discuss their credibility and findings that arise from their evidence.

***Lopez Kimbinga***

Mr Kimbinga had commenced work at 4.00pm on 16 November 2013. There is no evidence of impediment through fatigue, despite the event occurring over 10 hours later. He had not been drinking nor taking drugs. When giving evidence at the inquest, his memory appeared to be very good.

He stated that when the four males entered the cab he asked for an address and was told he would be directed where to go. He stated he was told to go to Blackmans Bay. He asked again on Algona Road for an address as he knew the area, but was told by one of the males to keep going straight and he would direct him. He followed those directions and started to slow down at one stage and was told to keep going.

One of the males told him to pull over on Jindabyne Road. He stated that it was not unusual to not be given an address and then receive directions from a customer.

At one point he turned the music up as requested by one of the boys. He could not nominate which boy gave directions or even if it was the same person that gave those directions. He provided specific evidence about the content of the directions, stating ‘... *At the gantry (on the Southern Outlet) I asked which way to use and one of them said to keep in the right lane so I used that...*’

One boy asked Mr Kimbinga at the taxi rank if he could smoke in the car and he said no. On the Southern Outlet, before Mt Nelson, he saw two of them smoking. He pulled over and told them to stop. At this time the boys were laughing, swearing, poking fun at him, and saying that they would smoke if they wanted to do so. He stopped the taxi and put on his rear light. The boys told him that no one was smoking in the taxi. He did not see the cigarette anymore and turned and drove off.

He stated that he drove for 1.5 kilometres on (or past) Opal Drive and one boy said to stop here. He started to slow down but another one of them said ‘...*no no keep going, we will tell you when....*’ He kept going to another small roundabout, where he turned left. He gave evidence that he had just turned the corner into Roslyn Avenue and was told to stop after driving 50 metres on Roslyn Avenue. He indicated and pulled to the curb.

One of the boys then told him to keep going and they would tell him when to stop. At the top of Jindabyne Road he stated that he was told to pull over. He sought to clarify the location and he heard the door open. He stated he had not slowed down and was still doing 40 – 50 km/h. He stated that the boys all jumped out before he had time to slow down or stop. There was no warning to him of their actions.

At the start of his evidence at the inquest, he wished to change his original statement from the following statement:

*“...I said no don’t jump I will stop and heard the door open and this boy jumped out, I had not started to slow down yet..... I said no don’t jump ...and then another boy jumped and then the third person jumped out....They all jumped out so quickly....when the last one jumped out and I turned my cab around...”*

to the statement in his later proof of evidence:

*“...I saw the sliding door was open and I saw people jump out when I started going downhill....I had to concentrate on where I was going as I was talking to the last person.....as I was going down the hill this man jumped...”*

Mr Kimbinga presented as a clearly spoken and genuine person. He told the Court that any differences in evidence between his statement and oral evidence may have been due to language difficulties, stating that he used to think in French and translate to English. I do not accept that this is the case. He was most articulate and fluent in English. It is difficult to imagine that his English could have been so poor as to be mistaken only on this single and vital piece of evidence.

I find that the reason for changing to state that he only saw the back of the third boy as he exited was, consciously or subconsciously, to minimise his responsibility in knowing of the alighting of the first two. The fact that he turned the light on before the first two alighted strongly indicates that he observed that they were alighting as he initially stated.

In his oral evidence he reiterated that he did not see the first or second boy exit, only the back of the third and then the fourth.

In his original statement he said he heard the taxi door open. In his oral evidence, he said he did not hear it due to the music and engine. Again, his latter evidence tended to be designed to minimise his awareness of the incident.

He gave evidence that he had trouble keeping his speed up as he climbed towards the top of Jindabyne Road. He could not be accurate with the speed but it was somewhere between 40 – 50 kmh.

He told the fourth boy (Jayden) not to jump and he would stop the vehicle, but before he could finish that boy also exited the taxi. He then turned the taxi around in the cul-de-sac.

He stated that another boy (Jack) came to the scene and paid the fare in front of a police officer. Jack initially stated he didn't have enough money but then paid him in full, plus extra. He heard Jack tell the police officers that he had spoken to the driver and everyone was going to use their cards to pay the fare. Jack gave him \$70. The fare was \$52. Jack told him to keep the change.

It was his evidence that there was no mention of payment by any of the boys as they got in the taxi, at any time during the taxi ride or when they were alighting. He denied Nick's assertion that he agreed to accept payment by three credit cards. When put to him about whether he would have accepted three credit cards if offered, he said he would have and had done that before as well as accepting card and cash from passengers.

When asked how he knew the first and second boys were out, he said, "*... I know I have four passengers and I saw one going out, the other was in the process of going for the door, when I said don't jump, I turned my head and the second time I did not see anyone and my car was empty ...*"

When asked again whether he was still doing 40 – 50 km/h at this point, he said "...yes, already finished the top of the hill and was looking down the hill ..."

He stated that he travelled no more than 50 metres after the fourth boy got out before he turned around to come back to see what had happened.

When asked if he had been doing 40 – 50 km/h at the top of the hill, and did he brake on way down to keep to the speed limit, he agreed and stated, "*... the hill makes it go faster ...*"

Mr Kimbinga said that he braked after the fourth boy got out. When asked how long it was between the third and fourth boy getting out, he said, "*... less than 5 seconds ...*" This statement is incorrect as the taxi footage indicates that it took Jayden 10 -

17 seconds to alight after Sean did so. Again, his objective, I find, was to minimise his responsibility to portray that they all exited quickly so as to dispel the hypothesis that he deliberately kept Jayden in the taxi to extract payment from him.

Mr Kimbinga agreed with all the speed readings given by the GPS with the exception of two, being:

- The speed of 91 km/h on the Channel Highway. In his disagreement he was, in fact, correct. The speed of 91 km/h was in fact on Algona Road where a limit of 100km/h applied.
- The speed of 6 km/h on Jindabyne Road where the boys alighted.

When Ms Hickman asked him if he could be mistaken in respect of the second speed reading, he said, *“... if I tried to slow down I should say where it occurred, the only place I did this was when I slowed down on Roslyn Avenue ...”* He subsequently reiterated his evidence that he did not slow his taxi at any point on Jindabyne Road. He stated about the GPS *“... it needs further investigation to see how it (GPS) works ...”*

When it was put to him that he had stopped and subsequently sped up to keep Jayden in the car, he said *“no”*, and further *“... what I am going to say is to keep him in my vehicle would be to arrest someone and I’m not meant to do that ...”*

When put to him that he kept Jayden in the car in order to secure payment he said, *“... I did not accelerate to keep someone in the car ...”*

When it was put to him that the evidence pointed to him stopping or slowing down he said, *“... it’s very hard to agree with that because it didn’t happen to me, I’m a Christian and I know how precious life is and if I can save a life I have to do it, I didn’t slow down or take off ...”*

He correctly identified the location of where the third boy (Sean) got out as being able to see the gravel road through the open door.

He gave evidence that he did not slow or brake even after the fourth boy, Jayden, got out of the taxi. He stated that the first time he pulled up was after he turned around and then saw Jayden lying on the roadway. He then stopped on the opposite side of the road.

When the progressive nature of the injuries of the boys was put to him as evidence of a stop and then acceleration, he suggested luck had been a factor. Again, I find that this was an attempt to maintain steadfastly his version that he did not increase the speed of the taxi with one boy still in the car.

The evidence of Mr Kimbinga activating the interior light of the taxi is important evidence of him stopping the taxi.

As discussed, the taxi footage clearly shows the interior light was on and must have been triggered by the driver manually switching it on. On all other recorded occasions on the footage he had stopped the taxi before activating the light.

As submitted by Ms Hickman, it might be suggested that he turned on the light in anticipation of the stop whilst slowing. However, he was very clear in his evidence that he kept driving at the same speed and enquired as to the location of the requested stop. It was then that the boys exited the taxi. There would have been no reason to turn the light on at this stage whilst the taxi was still moving. I observe that Mr Kimbinga did not turn the interior light on in Roslyn Avenue when, according to his evidence, he was better prepared, and had pulled in toward the kerb.

Mr Kimbinga did not appear to be a person who acted in anticipation of actions. His evidence was deliberate and structured. Similarly, Mr Kimbinga gave the impression during his evidence that he was a careful driver and would not be distracted to turn on the light whilst still moving.

Additionally, the footage shows that the interior light was in front of him and bright for him whilst driving.

I find that Mr Kimbinga stopped and turned on the light to allow the boys to pay and alight. He accelerated whilst the first three boys were alighting.

One reasonable explanation for the acceleration is that Mr Kimbinga wanted to keep one of the passengers in the vehicle to take to secure payment. Another explanation is that he panicked.

He stated that he was in shock after the incident and he had gone over and over the matter in his head. In many respects Mr Kimbinga gave good quality evidence. For example, I accept his account of the journey, the route, the smoking incident.

I do not accept at face value his assertion that there was no mention to him of payment of the fare. It is quite feasible, as per the assertion of Jack afterwards, that that they did ask him to split the fare, which request he declined. However, this finding is not critical. I find that even if the request was made to him, it was, as Ms Hickman submitted, a ruse to cover the intention not to pay the fare.

I formed a favourable view of Mr Kimbinga in general terms. He appeared diligent in his driving and wanted to do the right thing. However, I find that his initial statement to police shortly after the event was incorrect in the assertion that he maintained a constant speed of 40-50kmh whilst all boys were alighting. I find that he stopped. I also do not accept that he was not aware of all boys alighting. I find that he was aware of the first three alighting and that he accelerated after Sean alighted with Jayden still in the taxi. I find that he was aware of Jayden's presence in the taxi and aware of his exit and continued to accelerate, only decelerated upon reaching the Bluewater Court cul de sac further along Jindabyne Road.

### **General Comments upon the evidence of Nicholas Cherry, Sean Ash-Williams and Jack Beadell**

In very general terms, the three boys gave evidence that they had agreed between themselves that they would pay for the taxi fare one third each. Each stated that he was very intoxicated, but that Jayden was the most intoxicated of the group of four.

They denied, despite much evidence to the contrary, that there was a common plan, made before entry into the taxi or at any time before the end of the journey, to evade the fare.

The broad substance of their evidence, which contained many inconsistencies between them and with the other evidence, was that at the top of Jindabyne Road the taxi stopped as they directed it to do. They exited the taxi in the order of Nick, Jack, and then Sean. They gave evidence that they were intending to pay Mr Kimbinga after exiting the taxi. However, their evidence is that they did not have a chance to pay him because, from the stationary position, he drove off at an increasingly fast speed that was dangerous to them whilst still alighting. Thus, the tenor of their evidence was that they alighted from the taxi whilst it was stopped or almost stopped but that in the process of the three of them alighting, the driver accelerated with Jayden still in the taxi.

Each stated that they did not see Jayden's subsequent exit from the taxi but they were aware after their exit that Jayden was not with them. Their accounts as to their movements afterwards differed. In general terms, they stated either that they waited around the area for Jayden or left, but did not immediately walk down Jindabyne Road to look for him.

For the reasons set out below, upon analysis of their evidence, I do not accept their evidence that they did not plan to evade the taxi fare. I find that they did not at any time intend to pay Mr Kimbinga for the fare. I find that all four boys participated in the plan. I find that Mr Kimbinga was directed to stop at the gravel road so that they could escape to Jayden's house without being located by the taxi driver. I do accept their evidence that, for this purpose, Mr Kimbinga was directed to stop at the gravel road with the intention of alighting. I also accept their evidence that Mr Kimbinga, after stopping, accelerated with Jayden in the taxi and continued along Jindabyne Road in the same direction. I accept their evidence on these latter two matters because the objective evidence corroborates their account.

I will now set out the evidence of the three boys and make findings regarding their credibility. I acknowledge the detail in which Ms Hickman, in her submissions, has thoroughly analysed issues of credit, internal inconsistencies and comparisons with the other boys' evidence and objective evidence. Whilst I do not repeat all issues set out in her submissions I accept her reasoning as correct.

### **Sean Ash-Williams**

Sean had known Jayden since they were 13 years old and described them as good friends. He described Nick as also being a good friend.

He described himself as "10/10 drunk" in the taxi and didn't sober up when he got out. He stated that "*It took every bit of energy to walk, co-ordinate*" to the point of being unable to function. However, he said in *evidence* that Jayden was in a worse state of intoxication than he was; and that Jack and Nick were very intoxicated but less so than he and Jayden.

Constable McIndoe described him as clearly under the influence but observed that he strolled down the road, could walk "all right", smelt of alcohol, his words were a "bit slurred" and he was evasive in answers to their questions.

I find that Sean significantly exaggerated his state of intoxication. This is also evidenced by the taxi rank CCTV and the taxi footage where he appeared well in control of his movements. His exaggeration as to his state of intoxication, I find, was for the purpose of reducing his role and culpability in the event.

His evidence of putting ear phones on and “zoning out” for the trip is clearly untrue as demonstrated by the taxi footage.

He recalled Jayden giving directions and then the taxi stopping. He was aware of the gravel track between Jindabyne Road and Jayden’s house. It is likely that Jayden gave directions to Mr Kimbinga at least some of the time for the reasons outlined by Ms Hickman, including the seating position of Jayden and his appearance of interaction with Mr Kimbinga on the journey.

Sean gave evidence that the taxi stopped and Nick opened the door and got out. Jack then alighted. Sean stated that he was midstride when he noticed the taxi moving forward. As his feet hit the road, he tumbled to his right, rolled at least twice and stopped when his head hit the cement footpath. He heard the taxi engine rev louder. It was level with a slight decline. He said, “... *I’ve jumped out; my weight was off centre...*” When questioned about his use of the word “jumped” he said “...*I didn’t jump out I stepped out...*” He said Nick opened the door and stepped out and that it wasn’t “... *a big jump ...*” Again his use of the word “jump” suggests a deliberate jump from a moving vehicle.

It took under five seconds for Nick, Jack and himself to alight. Sean described it as “... *second nature to stand up and file out ...*” It is inherently unlikely that three passengers would alight from a taxi in this short space of time except if they were alighting in a hurry. He stated that he said he did not tell Jayden he was getting out, even though he was aware of Jayden’s state of intoxication.

Sean vacillated considerably as to whether, upon alighting and falling, he lost consciousness. He told the court that he did not know if he was unconscious at all, and then later in evidence said he was not conscious for a while; and then, that he was “*not conscious of where he was*”. He stated that he was dazed and “*couldn’t remember parts of it*”. I reject his assertions that he lost consciousness at any time. He was evasive and inconsistent. No other evidence supports this. I find that again the evidence was given to minimise his responsibility in the period after Jayden suffered his injuries and to explain inconsistencies in his evidence.

Sean gave evidence that he got to his feet, and did not know where Nick or Jack were, even though he expected to see them. I find that it is likely that, by then, they had quickly run away along the gravel road to Jayden’s house in accordance with a prior plan to do so.

Sean’s account of what he did after exiting the taxi defied belief. He gave evidence that he had lost his wallet during the fall from the taxi and started looking for it. He conveniently described a loss of consciousness or memory pertaining to the period in which he was looking for his wallet. He stated that he deliberately ignored phone calls from Jack through this time and only answered the moment he found his wallet stating “... *I had a one track mind, one step at a time ...*” He said that finding the

wallet became the only consideration as it had his personal identification in it and he needed to pay for the taxi. He stated no one helped look for it with him and no one was around. He conceded eventually that he could have returned to Jayden's house during this period.

He did not dispute there was a 45 minute gap between getting out of the taxi and arriving back at the scene. When asked to account for the 45 minutes he said he could not. He nominated that he could only account for five minutes of that time. Incredibly, he did not see the ambulance or police go past to the scene even though he was apparently in the vicinity searching for his wallet. He denied hiding up the road and watching the scene during those 45 minutes. He had no recollection of trying to call anyone, including Jayden. It was suggested to him that police and ambulance officers did not see him as he wasn't there and he stated, '*...I could have been looking for my wallet up a tree, I don't know where I was looking for my wallet.*' This response was both unhelpful and ridiculous.

His evidence of staying at that location looking for his wallet is at odds with Nick's evidence that they walked into the church car park and at odds with both police and ambulance officers who did not see him. One of the ambulance officers stated in his affidavit that he would have stopped if he had seen anyone on the street as he didn't know the exact location of the event.

Illogically, Sean stated that he had a clear recollection that he needed his wallet to pay the taxi driver, notwithstanding that the driver had already driven away at some speed and had caused him significant injury.

He conceded that he could have gone back to 65 Tingira Road, and then denied it. Mrs Field gave evidence that she believed Sean returned to her house with Nick, before getting a phone call and leaving. She was given this information at the hospital the next day. Although hearsay, it is plausible.

Phone records indicate that Sean answered a call earlier than the time when Jack directed him down the road and stated that he was there moments later. There was also one attempt made to call Jayden. He attempted three times to call Nick.

As previously stated, the number of calls between the boys is indicative of a 'panic' situation by the constant use of the phone, with the majority of contact and attempted contact between Sean and Jack. This is suggestive that Sean may have known about Jayden being injured much sooner than he stated. He may well have been reluctant to show himself with police officers present, knowing he had evaded the fare.

His evidence of looking for his wallet for 45 minutes is at the least exaggerated and more likely fanciful. There was a street light opposite, the footpath was a lighter colour, his wallet was black, and he was using his mobile phone light. It is absurd to suggest that it took this length of time to find it in the exact vicinity it should have been. I do not accept that he lost his wallet at all.

Once he found his wallet he answered a phone call from Jack. Jack informed him of Jayden's serious condition. He walked about 50 metres down the hill to where Jack was. Constables McIndoe and Leek were present. They questioned Sean about

where he had been and whether he evaded the taxi fare. At times he was unable to answer their questions and he appeared to show little concern for Jayden. He told them variously he was looking for his wallet, looking for a friend, and had “freaked out” because he couldn’t pay the fare on his own.

Both officers gave evidence of a change or adaption of the version of events given by Sean on the evening, and also the difficulty in gaining his answers. He was uncooperative with the officers. He was asked why he jumped out of a moving taxi by Constable Leek and he replied it was because Nick had already got out. He did not at any stage tell the officers that the taxi driver accelerated and caused him injury. In his evidence at inquest he denied telling police that he jumped out of a moving taxi because Nick had done so. He went on to deny telling police he was a little freaked out as he couldn’t pay the taxi on his own. He said he recalled almost nothing of his interaction with police, other than feeling aggrieved at being challenged by them.

He was very resistant in the way he gave his evidence and received multiple warnings regarding his unresponsive answers or lack of them and his gratuitous comments on questions asked of him. His evidence was argumentative, unhelpful and resistant.

He was, surprisingly, able to describe exiting the taxi in specific detail, as was Jack. His change of exit location from the road (in his original statement) to the footpath corresponded with the other boys’ later evidence. He conceded that he had distinguished in his statement between the road and the footpath. His response to changes was very quick and gave the impression that it had been prepared. As a result, it was highly unlikely the original statement was incorrect and he was changing it to align with the other boys’ evidence.

When challenged by police he changed his story to explain the 45 minute delay in his appearance.

His evidence of focusing on his wallet and not answering his phone to Jack, despite it continually ringing, is again fanciful and defies any logic when Jack could have assisted him.

As with Jack, his memory tends to peak at the point he exited the taxi. His recall was very poor for the remainder of his evidence.

His evidence of stepping from the taxi was at odds with using the word “jumped” from the taxi three times during his evidence.

Despite the seriousness of his injuries, he did not seek medical attention.

Despite his manner towards the taxi driver displayed at the inquest, he failed to mention to the police officers that the taxi had driven off, or his injuries. He could provide no satisfactory answer or even supply a reason that he had not called police when his drunk and vulnerable friend was being driven away by a taxi driver.

In summary, I find that Sean gave false evidence to the court when he testified that there was no plan amongst the boys to evade the taxi fare. I find that he was part of such a plan to do so and alighted from the taxi whilst it was accelerating, it having

previously stopped as directed. His subsequent behaviour, interaction with police and statements were made with a view to concealing the plan. He, along with Nick and Jack, knew the extent of Jayden's intoxication. It must have been apparent to him that Jayden was too drunk to alight quickly from the taxi. He did not look after his friend Jayden. His callous failure to look for Jayden and to go to Jayden's assistance is reprehensible. His overriding concern was for himself and the consequences of his involvement in the plan not to pay Mr Kimbinga.

### **Nicholas Cherry**

Nick knew Jayden and Sean very well and said that they used to "hang out" as a group of three.

Nick described himself as being "8/10 drunk" on the evening in question. He stated that he had 12 beers at Beerfest and at least several raspberry vodkas in town. The taxi footage shows his head in his hands at times, indicative of intoxication. Constable McIndoe said that he smelt of alcohol when she spoke to him at Jindabyne Road, but she recorded no specific symptoms of drunkenness. Sean and Nick nominated him as being the most intoxicated after Jayden. I find that Nick was significantly intoxicated but had recall of many parts of the evening.

As will be discussed, Nick's evidence in many respects was incorrect, given for his own purposes, unhelpful and disrespectful to the court. It is rare in my experience to encounter such an overtly hostile witness. Despite my warnings to him concerning contempt of court, he remained rude and aggressive. I formed the view that, by nature, he had little regard for others or respect for authority.

Nick made comments regarding Mr Kimbinga's inability to take the shortest route and to follow directions. Much of his evidence at the inquest focused on this, yet he agreed that he did not say anything at the time despite the concern he felt. His evidence that the taxi driver did not travel along Opal Drive is likely explained by the fact that the taxi was directed to turn away from the closer front entrance to Jayden's house.

He heard Jayden say to "*stop here*" on Jindabyne Road. When asked if there was any conversation before that comment by Jayden, he said that there was not, then stated that Jayden told Mr Kimbinga that they had three different bankcards to "divvy up" in payment. Whilst this may possibly be correct, I reject Nick's evidence that Mr Kimbinga accepted this form of payment.

Nick stated that he could not see a way to pay the fare from the back so he got out of the taxi and was going to pay by walking around to the driver and using the EFTPOS machine.

Nick denied he earlier told Mr Eather he had no money to pay for a taxi. I reject his denial. He also denied that he asked Mr Eather to catch a ride home in his taxi. Again, I reject such denial. Ms Hickman fully analysed his evidence surrounding this point in her submissions. Her analysis highlights his unbelievable and unacceptable evidence surrounding the issue of payment.

Nick was the first out of the taxi. He stated that when he got out he stood there because he didn't know what was going on. He said his plan was to walk over to the driver and pay the fare. *He said: "I opened the door and stood up. As I got out the taxi was moving slowly, it was going between 2kmh and 5kmh, which is walking pace. It was easy for me to get out and keep my balance".*

Nick gave evidence that Sean and Jack got out soon after he did. The taxi kept driving, heading uphill, further up Jindabyne Street.

When asked about the pace of the exit, he stated, "...Jayden told him to stop, the taxi stopped ...I've opened the door and stepped out and the taxi has started taking off ... no reason as to why he thinks I wouldn't be paying ..."

The evidence of the taxi moving when alighted was explored at length. Of his entire police statement, he stated that he was only wrong about the taxi still moving when he got out. His description in his police statement taken on the day of the incident was very detailed. His explanation to the court was that police put words in his mouth. He said "... I didn't realise it would be such a big thing ...". He subsequently denied he told the court police put words in his mouth. The evidence in his original police statement is evidence of, anticipation of exiting the moving vehicle.

He gave evidence that he, Jack and Sean walked to the church car public car park along the gravel road, and that Jack or Sean rang Jayden's house.

They had a cigarette and talked. He vacillated as to whether the duration of the talk was 5 or 20 minutes. He then walked 200 metres to Jayden's house with the other two boys. He said he was tired and went to bed inside.

Observing his behaviour during the inquest and on all of the evidence, there is no doubt that Nick would have complained bitterly and contemporaneously to witnesses and Mr Kimbinga of dangerous driving on the part of Mr Kimbinga. He knew the taxi had to come back past and yet he said he was away from the roadside in the church car park. The extraordinary evidence is then given that he "*got sick of waiting for Jayden*" and so he goes back to Jindabyne Road to go to bed. The explanation for his disappearance and lack of complaint is consistent with his guilty mind regarding evading the fare.

Nick gave evidence that he went to sleep at Jayden's house. Constables McIndoe and Leek arrived there and gave evidence that they both considered he was not asleep. They stated he acted as if he had just woken up and said to them "What do you want?" Constable McIndoe was surprised about his reaction to being advised of Jayden's critical condition.

As submitted by Ms Hickman, Nick's biggest grievance of the evening was that the police officers would not let him use his phone to secure a lift from the Field residence to his own residence and he was forced to walk home.

Nick failed to reasonably concede points. Whenever his evidence was at odds with Jack or Sean, he replied his was the correct version. Whenever his evidence was at odds with police or other evidence he considered his was correct.

His dominant status in the group is raised by Witness X, and his manner of giving evidence confirmed this characteristic. His intimidating manner causes me to have real concerns that he influenced Sean and Jack to modify their evidence to conform with his and to maintain the falsehood that they were not involved in evading the taxi fare.

His recall of not attending court on 16 December 2013 for the two offences of using threatening words to provoke a breach of the peace and failing to comply with a direction was not believable. He later conceded he had appeared in court, but only when the court audio recording was played to him.

His denial of recalling the police exclusion zones from his bail on 17 November 2013 was implausible as evidenced by his elaborate account of falling asleep in the Mall for an hour before Mr Eather woke him. This is contrary to Mr Eather's evidence. I find that Nick returned directly to the exclusion zone and went to the Supreme Court area to join the other boys. He disputed Mr Kimbinga's evidence about the stopping and cigarette on the Southern Outlet. I do not accept his account that he was not causing trouble at that stage.

Additional evidence came to light after Nick's evidence regarding two previous fare evasions in which he was involved. Nick was provided an opportunity to give evidence in regard to these two matters but did not.

In summary, I find that Nick gave false evidence to the court when he testified that there was no plan amongst the boys to evade the taxi fare. I find that he was part of such a plan to do so. He alighted from the taxi with no intention of paying Mr Kimbinga. His subsequent behaviour, interaction with police and statements were made with a view to concealing the plan. He, along with Nick and Jack, knew the extent of Jayden's intoxication. It must have been apparent to him that Jayden was too drunk to alight quickly from the taxi. He did not look after his friend, Jayden. His callous failure to look for Jayden and to go to Jayden's assistance is reprehensible. His overriding concern was for himself and the consequences of his involvement in the plan not to pay Mr Kimbinga.

### ***Jack Beadell***

Of the three boys, Jack was the least resistant in giving his evidence. The evidence indicated that he was reasonably intoxicated. However, Mr Nichols and the police officers indicated that he was coherent. Like the other boys, I find that he overstated his level of intoxication. He claimed a poor memory for many events and blamed intoxication. He did not recall significant events as the taxi rank, the conversation in the taxi, or who gave directions.

He stated in his original affidavit that the taxi stopped for them to get out and he didn't know where he was. He had never been to Jayden's house before. He stated that Nick exited first, and as he was stepping out he felt the taxi move forward. This caused him to stumble and fall when he hit the ground; he cut the palm of his right hand and winded himself.

He was sure the taxi was not moving when Nick got out. He said that Sean was nearby when he stood up. He then saw the taxi heading down the hill. Jayden was not present outside the taxi.

In his evidence his memory purported to be very good for the event of alighting from the taxi, suggestive of rehearsal or collaboration with the other boys. However, he denied conferring directly or indirectly with Nick regarding his evidence. I do not accept his denial in this regard.

Jack stated in evidence, *"...I lost my footing as I had no centre of gravity, it wasn't fast, we had stopped, I stepped out and where I got out was as the taxi accelerated and took off ..."*

He proceeded to describe in detail how everyone exited the vehicle, who was seated and how the door opened.

He denied Sean was standing over him and Nick in preparation to leave the taxi saying *"... I wouldn't say that the taxi was stopped and we were ready to get out ..."*

Jack stated that when the taxi pulled over near the gravel road as he recalled gravel on his hands. He was on the ground for *"... a couple of seconds at most..."* before he got up and saw Sean standing there.

He said Nick, Sean and he came together for a maximum of five minutes to talk about what just happened.

He said to either Sean or Nick (or both) they should go down the hill and look for Jayden but Sean remained behind to search for his wallet.

He conceded that he did not tell police that the taxi driver took off whilst they were getting out, and could not explain why not. He stated *"... I just can't explain it, it surprises me ... I can't explain it ... I did blame him for it ... I thought I would have told them (police) ... I really don't know how to respond..."*

Jack asserted that the taxi driver may have believed that they were not intending to pay the fare and that was why he drove off, but he could offer no behaviour that would explain why the taxi driver would have thought that. He blamed miscommunication for the non-payment. He did not accept that the boys got out quickly.

Jack continued to refer to "the plan" of stopping, getting out and paying. He used the word "plan" many times during his evidence. When asked if there was a plan to evade and he may have forgotten he said *"... no it's not possible, we never, had a plan to do that ..."*

He stated that he did not know or doubted the others had a plan to evade. His statement to this effect was not credible and I do not accept it.

He denied going back to Jayden's house.

He said Sean remained on the footpath looking for his wallet. He did not see what happened to Nick. He said they were together for about five minutes maximum before going down the road to Jayden.

Tried to explain any differences in the boys' evidence as, "...I was dazed and confused...". He conceded he may have gone back to Tingira Road but didn't go inside the house. He said he had been trying very hard to forget the details for the last year.

When asked why he waited 5 to 10 minutes on the footpath, he said he was waiting for Jayden to return, then said, "...well I don't know why I was waiting...".

He did not know where Sean looked for his wallet. He was not concerned Nick was also missing. He later said he thought it was, "...a bit weird..." that Nick was no longer there.

When he arrived back at the scene to find Jayden injured he showed genuine concern for his condition. He was the only one of the boys to show concern. He paid Mr Kimbinga the taxi fare and an additional \$18.00.

There were significant sections of evidence Jack did not recall or know, such as their movements at the taxi rank and the conversation in the taxi.

Jack did, however, recall in detail almost everything about exiting the taxi, including the manner in which stepped out. His purported recall of the detail about the location and actions of Nick and Sean as they alighted was not realistic. If it was a genuine recollection, it would extend to what occurred at the scene, what he told police and how he behaved. However, this evidence was lacking.

He does not recall what he said to police at the scene. He did not tell police of the driver's alleged actions at the scene when the first opportunity arose. This is despite minutes earlier behaving aggressively and blaming the taxi driver for what happened to Jayden, in the presence of Mr Nichols.

Significantly more details have been added to his evidence surrounding exiting the taxi since his first police statement. These are details relating to specifically the actual incident of alleged fare evasion. This is indicative of rehearsal or preparations by speaking to others or reviewing media coverage.

The inclusion of details around the issue of the fare evasion matched previous oral evidence by Nick and Sean in striking similarities, even using the same words. However, his evidence was at odds with Nick and Sean in regard to the "plan" regarding payment. Also at odds was Sean's description of his exit and what occurred after that including that they stayed together at the scene for up to five minutes waiting for Jayden. His evidence relating to getting out and walking around to pay the driver required significant questioning before he conceded it would have been easier to pay in the taxi.

Although this was a significant event in regards to a number of aspects, the passage of time had also interfered with his memory.

In summary, I observe the following salient features of Jack's evidence:

- He failed to tell police about his injury;
- He failed to tell police about the taxi driver driving off despite levelling such allegations at Mr Kimbinga just prior to talking to police;

- He could provide no satisfactory reason why he did not call police when his drunk, vulnerable friend was driven off at speed by an unknown taxi driver;
- He provided implausible answers to questions posed by the police officers at the scene regarding the fare evasion;
- He paid more than the fare to Mr Kimbinga despite his account that the taxi driver was responsible for dangerous acceleration and causing Jayden's injuries;
- He suggested to the court that he could understand Mr Kimbinga's position;
- He changed the content of his evidence during the inquest, in many respects;
- Conversions started to appear in his evidence seemingly to explain or fit in with other evidence. These were explained away by being dazed, although there was no evidence of a head injury, and shock.
- Police evidence of words used at the scene is reflective of more honest answers without preparation.

I find that Jack gave deliberately false evidence to the court when he stated that there was no plan to evade the taxi fare. The remainder of his evidence was tainted by attempts to maintain this falsehood. Of the three boys, he was the only one that showed genuine concern for Jayden's welfare by returning to the scene quickly.

### **Factual findings and General Discussion:**

For the reasons given, I find that the taxi fare was not paid at the end point of the journey at the top of Jindabyne Road.

I find that, neither Nick, Sean, Jack nor Jayden had any intention of paying the fare. To the contrary, their intention was to exit the taxi, once at the required destination, without paying Mr Kimbinga.

I find that a plan between all boys was discussed before getting into the taxi and maintained whilst on route. Whilst Jayden must have been part of the plan, his ability to effectively participate in it or implement it was severely compromised by his state of intoxication. This is evident by him attempting to enter an unsuitable taxi at the taxi rank and failing to leave the taxi when his friends did so.

Any discussion regarding payment by cards was either a pre-planned diversion tactic or fabricated after the event in an attempt to attribute additional blame toward the taxi driver.

As previously discussed, I find the taxi stopped alongside the start of the gravel road off Jindabyne Road. Sean stood in anticipation of making a quick exit and stood over Nick and Jack. The interior light was activated manually by Mr Kimbinga. Nick alighted, then Jack and then Sean. In this process Mr Kimbinga accelerated. At a point 129 metres away Jayden intentionally exited the taxi when it was travelling at a speed of 43km/h. By the time Jayden alighted the other boys had gone from Jindabyne road along the gravel road.

Due to Jayden's intoxication level, he did not appreciate the timing of the exit of his friends, nor correctly assess the safest point at which he should have alighted from the taxi.

When he eventually did so he took hold of his black bag and jumped out of the taxi. He did not have any proper appreciation of the speed of the taxi or the dangerous nature of his actions at that point.

His feet hit the ground and he tumbled until he came to a stop when his head hit the kerbing.

The taxi did not slow down significantly until it was nearing Bluewater Court, a long distance from the top of the hill.

Mr Kimbinga was not intoxicated nor had any issues that impaired his judgement and decision making capacity at the time. He presented as a person who took his work seriously and had good driving knowledge. He witnessed three of the four passengers quickly alighting from his taxi. He made the decision to accelerate in this process. This was a decision attendant with significant risk to Jayden as the last remaining passenger, regardless of whether or not his fare would be paid. He may not have adverted to the possibility that Jayden might also jump. However, I would be surprised if he did not. He was calling to Jayden not to jump whilst Jayden was still in the taxi. A reasonable driver in Mr Kimbinga's position should have foreseen that obvious possibility. He may have initially assessed it as most unlikely that Jayden would jump out given the increase in his speed. If that was his thought process it did not properly take into account Jayden's level of intoxication and associated impaired judgment, nor the actions of the other three boys. A clear thinking and prudent taxi driver would not have accelerated whilst the first three boys were alighting.

Mr Kimbinga knew that the sliding door was open when Jayden remained in the taxi. Whilst his speed as he accelerated did not exceed the zoned limit it was obviously excessive with regard to a highly intoxicated passenger in the rear with the sliding door open. The obvious and safe response, having started to accelerate, would have been to brake and then stop. He had time to do this safely before Jayden made his move to alight. If Mr Kimbinga had done this, Jayden would not have suffered fatal injuries.

The actions of the boys must have led Mr Kimbinga to believe they were not intending to pay him. One obvious reason for his deliberate decision to accelerate as the boys were alighting was to keep at least one in the taxi to secure payment. This motivation may have been the reason he did not give the correct evidence, knowingly or unknowingly, that he stopped the taxi at the gravel road.

Another reason for his decision to accelerate might have been fear and/panic on his part accompanied by a desire to remove himself from the three boys. He had already experienced a concerning incident in the taxi on the southern Outlet associated with abuse to him. He had every reason to feel some concern and possibly fear.

He did not appear deceptive and was prepared to concede on a number of matters where his memory was clearly not correct.

Ultimately I am not able to make a finding as to whether Mr Kimbinga accelerated his taxi with the intention of holding Jayden for the purpose of securing the fare, whether by taking him to a police station or to another place. This is because I cannot

reasonably rule out the possibility that his actions were as a result of panic and lack of clear thought.

If it was the case that he made a deliberate and unwise decision to keep Jayden in the taxi, it was a poor response to a very difficult situation for him. As a taxi driver his hours were long and he was not well remunerated. The Blackmans Bay fare was a large one in the context of his shift. He stood to personally lose one half of the fare. It may seem clear in hindsight that Mr Kimbinga should simply have stopped the taxi and not driven away, whatever his motivation was in doing so. However, I accept that in the circumstances as they presented to him, he found himself in a difficult situation. Sadly, the consequences of that decision were part of the reasons for Jayden's fatal injuries. Jayden's own decision to alight in dangerous circumstances was, of course, also part of the reason.

I am not able to find that Mr Kimbinga deliberately gave false evidence in testifying that he remained at a constant speed and that he did not stop. He was generally a good witness and presented as a hardworking and respectful person. It may be that Mr Kimbinga remembers the events as he recounts and his memory is affected by shock. There were several people who attested to Mr Kimbinga suffering significant shock and stress at the scene.

As discussed, I find that each of Nick, Jack and Sean deliberately and repetitively gave false testimony to the effect that they did not form or attempt to implement a plan not to pay Mr Kimbinga. Much of their evidence was tainted by this falsehood and could not be accepted at face value. Fortunately, objective and forensic evidence was adduced to enable me to make important findings. I accept the reasoning of Ms Hickman in her submissions in being satisfied that the three boys had discussed their testimony between themselves in an attempt to align the account. They were given many opportunities to state the truth but did not do so. Their disrespect for the court inquest process was manifest. Such lack of regard for the process of determining the truth of the events is not often displayed so overtly in any court proceeding. In this case their evidence was given in the presence of Jayden's mother and family members and involved the tragic death of their friend.

### **Police Investigation**

The issue of the adequacy of the police investigation was explored at length with Constables Leek and McIndoe, Constable Cordwell and Acting Sergeant Nicola Parsons.

Both Constable Leek and Constable McIndoe were relatively inexperienced police officers. A police supervisor did not attend the scene or have any contact with or assist them at the scene.

Acting Sergeant Nicola Parsons was the station custody officer at HPS and assisted the two officers with the various matters associated with the investigation once they had returned to HPS. In particular, she arranged for the taxi to be retrieved and taken to HPS for inspection. She stated that she was not the supervising Sergeant of the two officers on that evening but she was able to provide some assistance. She stated, however, that she was not available to consider the matter in its entirety apart from doing the best she could to provide advice to the two officers. She gave

evidence that their supervising Sergeant, Ralph Di Monda was not in a position to give any substantive input into the investigation due to him being on patrol and occupied with other matters. She stated that the evening was very busy.

Constable Cordwell gave evidence that on 17 November at about 12.00pm the Inspector at Kingston (identity unascertained) requested AIS to attend the scene. It appears that once that Inspector came on duty at Kingston, presumably after 8.00am, he/she deemed this to be the appropriate response to the serious nature of the injury to Jayden as well as being required by the police manual. AIS attended at about 2.00pm on that day. The scope of the investigation required of Constable Cordwell was limited to the speed of the taxi upon Jayden's exit. She was not asked to take control of the whole investigation.

In general terms the evidence revealed that the main issues relating to the investigation were as follows:

- ***A general lack of awareness by Constables Leek and McIndoe of the presence of Jayden's shoes on the road and the importance of the preservation of the scene.***

The position of the shoes was an important part of the evidence for the crash investigators in determining that speed of the taxi. Fortunately the shoe was photographed on the roadway by Constable James.

Constable Leek stated he was not shown the shoe by Mr Nichols, (as Mr Nichols stated) and was unaware at any time of their being a shoe on the roadway. He did see one shoe on the footpath as he pulled up. He was a passenger in the police vehicle. He did not recall the police vehicle running over an object on the approach to the scene. Constable McIndoe stated that she was not shown the shoe on the roadway by Mr Nichols but did notice one on the footpath directly where she pulled up the police vehicle and parked;

The police vehicle being driven by Constable McIndoe stopped directly in front of where Jayden had lain injured on the roadway- a position not favourable to preserving scene evidence away from the actual spot Jayden ended up in. I note that when Constable James arrived he stopped his vehicle well short of the scene to ensure evidence preservation.

Senior Constable Cordwell stated that had the shoe been moved by a police vehicle driving over it, the result may have impacted on her speed estimate but would have only made the taxi slightly higher in speed. There was no evidence that she could see in the photographs showing wheel marks on the shoe or it being flattened or marked. She conceded the shoe was pliable and would not necessarily show anything in any event. It is possible that the police vehicle did run over Jayden's shoe.

- ***The taxi was not inspected at the scene and was permitted to be driven away from the scene by Mr Kimbinga.***

Later in the shift, Acting Sergeant Parsons became aware of this and made arrangements to seize the taxi for inspection. Some defects were later found

by transport Inspectors but these had no bearing on the cause of Jayden's injuries.

- ***Whilst a breath test was completed and was negative, no blood or oral fluid test was taken from the taxi driver to exclude illicit substances paying a part.***
- ***There were minimum contemporaneous notes taken at the scene.***

Notes were made via an IDM report submitted before the end of the shift. The notes became very important in regard to crucial factual findings and memory recall. I cannot criticise the lack of notes in the circumstances. The officers were managing a very difficult situation and ultimately completed a detailed IDM report. The lack of notes was, in reality, a symptom of the officers managing the matter without assistance.

- ***An incorrect assessment was completed by officers at the scene that the matter was not a road crash requiring the services of AIS.***

The initial call was to a "fare evasion", and that description was consistent with what was presented to the officers on arrival at the scene. However, despite the description of the incident, there was sufficient evidence to allow the conclusion that Jayden's condition was critical and thus to request the attendance of AIS to conduct a full crash investigation. Having classified the incident as fare evasion, it followed that there was no consideration of the possibility that Mr Kimbinga had committed a serious breach of the traffic law which would trigger the attendance of AIS. This comment is not intended to suggest that Mr Kimbinga did commit any such offence, but further consideration was warranted.

Unfortunately the lack of honesty by Nick, Jack and Sean at or near the scene, even despite the condition of their friend, continued to militate against the officers seeking to broaden the investigation into the circumstances of the matter. Importantly, all three boys failed to tell the officers at the scene that the taxi driver had accelerated as they exited the taxi. As submitted by Ms Hickman, Jack failed to answer police questions, Sean gave differing versions to explain his absence and Nick was highly uncooperative and self-focussed. No blame or attempt to blame the taxi driver for Jayden's outcome was made at the scene. Both officers were junior and lacked the relevant experience to identify the relevant issues. Their belief remained that the four boys jumped out at speed.

- ***Both officers were not provided with any supervision at the scene.***

They were expected to, and did, and complete the requirements at the scene: dealing with witnesses, the taxi driver, the three boys, ambulance officers, forensic officers, taking two boys home, notifying next of kin and taking them to the hospital. Sergeant Di Monda, the duty Sergeant, did not attend the scene. He was notified of the matter and called his unavailability within a matter of seconds. He provided no scene assistance or contact nor gave any

direction or advice. Radio Dispatch records show that he was also advised of an update of the condition of Jayden from the hospital. Although the inquest did not hear from Sergeant Di Monda it would appear that he had sufficient information to alert him to the possibility that AIS should be called. I accept however, that if he understood the matter as a case of evading a taxi fare, then he would not have adverted to the possibility of the taxi driver having committed a serious traffic offence.

Upon returning to HPS, the officers spoke to the Acting Sergeant Parsons. She did not consider the incident to be a crash or to come under the policy as being an incident to which AIS should have been called. Constable Cordwell stated that more evidence could have been recovered if she had been called at the time of the event and the scene preserved. Evidence could have been obtained from where the boys first got out and the area where Jayden got out. AIS would have coordinated the investigation and taken witnesses statements and interviewed the driver. Early involvement by AIS would have negated all the above dot points as being an issue. Acting Sergeant Parsons and both Constable Leek and McIndoe conceded during their evidence that AIS should have been called and that the policy had not been adhered to as it was not determined to be a road crash at the time.

As a result of AIS not coordinating the investigation the crucial witness statements (including Mr Kimbinga and the three boys) were taken by an array of different police officers who had not been to the scene and who had limited or no contact with Constables Leek and McIndoe. Such a disparate process was not conducive to ascertaining the correct facts.

The evidence was that between 2.00am and 8.00am on 17 November 2013 there were only 2 police cars on the road for Hobart and Kingston. It was a particularly busy Saturday evening/Sunday morning. The Kingston police station closed at 2.00am and thus the response to the event resulting in Jayden's injuries necessarily had to come from Hobart. It would ordinarily have emanated from Kingston. I did not have sufficient evidence to determine whether appropriate supervision resources were available for Constable Leek and McIndoe, given that help may have been available for Hobart from other stations (for example, Glenorchy or Bellerive). It appears to me that the duty Sergeant should have arranged for such scene supervision and to make a determination, as per the manual, as to the requirement for attendance of AIS.

### **Comments upon the Police Investigation**

I do not make any formal criticism of Constable Leek and McIndoe, or Acting Sergeant Parsons or Sergeant Di Monda. The above analysis, however, demonstrates that this was a serious incident requiring senior supervision at the scene and the attendance of AIS. The officers performed diligent work for the investigation of a fare evasion incident and appeared not to have had other readily available resources to draw upon for guidance. Ms Hickman suggested recommendations but in my view none are required. The setting out of the facts should serve to highlight the importance of investigating rigorously, in accordance

with the police manual, and with correct expertise and continuity serious incidents that have resulted in critical injuries.

### **Taxi Camera Operation and Testing**

The general issue as to taxi camera operation and testing was the subject of evidence at inquest.

The camera in the taxi camera was one approved under section 94 of the *Taxi and Hire Vehicle Industries Act 2008*. However, it was not operating correctly as per the manufacturer's specifications. It also did not comply with the standards published by the Department of State Growth, which I understand effectively replicated the manufacturer's specifications for the approved cameras. Constable Melanie Redburn, of Forensic Services, analysed the taxi footage and compared it to these requirements. The results are well set out by Ms Hickman in her submissions. In summary:

- (a) The prescribed default capture rate of 1 frame per 10 seconds whilst the meter was active was generally working correctly. However, there are periods of the journey that do not comply with this prescription: 2:19:24 to 2:19:35, 2:22:24 to 2:30:46, 2:31:07 to 2:32:41, and 2:37:58 to 2:39:04. None of these periods have any consistent rate applied and appear to occur randomly.
- (b) The meter activation occurs at 2:18:55 and records at a faster rate than the prescribed rate of 2 frames per second for 30 seconds either side of this 'trigger point'.
- (c) The door opening is not recorded as a 'trigger event' for a faster frame rate and, as such, the prescribed capture rate of 1 frame per second for 30 seconds either side of this event did not occur.
- (d) Braking events resulted in the prescribed capture rate of 1 frame per second for one second and worked consistently. It is difficult to determine whether the requirements prescribed a higher number of images (as the standards tendered suggest 5 images at one second intervals), however Constable Redburn and Mr Hope indicated the braking trigger worked as prescribed.
- (e) The duress alarm activation did not operate. Instead of the prescribed rate of 1 frame per second for 2.5 minutes either side of that 'trigger event', the rate is only evidenced by braking. The duress alarm activated at 2:41:00 according to GPS logs of the taxi.

Under the *Taxi Industry Regulations 2008*, regulation 40, the responsible operator of a taxi licence must ensure that a security camera system installed in a vehicle being operated as a taxi under the authority of the licence indicates that it is fully operational. The same regulation also provides that a person must not operate a taxi with a security camera system installed in it unless the security camera system indicates it is fully operational.

The malfunction impeded this investigation by not showing comprehensive footage at the time of the boys alighting from the taxi. If the system had been operating both

the trigger points for the door opening and duress alarms would have captured all vital footage in the standard time frames of capture.

Roger Burdon, taxi proprietor and president of the Tasmanian Taxi Council gave evidence at the inquest, He was the owner of the taxi company for which Mr Kimbinga was driving on 17 November 2103.

Mr Burdon is an authorised and qualified taxi camera tester. He is also a camera downloader and installer. He had installed the camera in 2010. He had annually tested it in accordance with requirements in the period before and after this incident.

He was not aware it was not operating correctly. He was shown his testing documentation and confirmed that no errors were errors were detected in the annual testing on 15 March 2013, (before the incident), and 6 March 2014 (after the incident).

He stated that testing occurs through use of software rather than actual viewing of footage. Indeed, he stated that he had not seen the footage before giving evidence to the inquest. He was unable to explain how testing procedures failed to identify the error. This raises cause for concern as to the testing process. Mr Burdon stated that he thought that there was something wrong with the camera.

David Hope, Director of Passenger Transport with the Department of State Growth also gave evidence to the inquest. He described the legislative requirements associated with taxi cameras, including the requirements of mandatory installation and testing of taxi cameras.

He had had an opportunity before giving evidence to watch the taxi footage. He also agreed that it was not operating in accordance with the prescribed standards. He was aware of a new camera system in Queensland that was phased in over a three year period to assist in the operator paying for the new equipment and the government approving a surcharge to assist in that cost. He also gave evidence that the camera in the relevant taxi had never been sent for nor repaired.

***Recommendations regarding taxi camera operation and testing:***

I recommend that the Department of State Growth review all aspects of the current regime for the testing of the operation of taxi cameras with the purpose of ensuring that testing requirements and processes result in achieving the prescribed footage; any such review to be in consultation with taxi proprietors and other stakeholders.

**Fare Evasion as an Issue**

Roger Burdon described fare evasion as being a significant issue for drivers and companies. He stated that on estimation the company suffered a loss of \$600-\$700 per week as a result of fare evasion. He gave evidence that the cost of fare evasion extended not just to cost recovery but also to time. Drivers would need to take their vehicles off the road for footage download, a process that could take hours.

He supported the concept of mandatory fares as outlined in Victoria. Issues for mandatory fares were also applicable in Tasmania.

He agreed some drivers would be reluctant to use this system.

The largest issue would be acceptance by customers and this would require wide spread education and promotion.

Evidence was adduced at the inquest from the Monash University Accident research Centre, being the paper *Evaluation of Mandatory pre-Paid Fares* by Erin Cassell and Nicholas Reid, May 2011. A summary of the paper is as follows:

- The mandatory pre-paid fares program was introduced in Victoria in 2008. Fares were made mandatory for pre-payment between 10pm and 5am daily in some areas of Victoria. The driver uses a device called a fare estimator to provide the amount of the pre-paid fare. Passengers are then informed of such and required to pay that amount. Any credit at the end of the journey must be returned to the customer;
- Drivers showed overall support for the program;
- 82% of drivers reported feeling safer;
- 88% of drivers believed it resulted in less fare evasions;
- 60% of drivers believed it resulted in less arguments with passengers;
- 88% supported the program;
- Reasons provided of the high level of support included less chance of fare evasions, the public were more aware of the law and it was good for dealing with young drunk adults;
- Reasons nominated for not using the system was that some passengers argued about pre-paying the fare, some were offended at being asked, some were unaware of the program;
- Young drivers used the program more than older drivers;
- Indian drivers used the program more than other origins;
- 30% of drivers reported always or usually using pre-paid fare provisions;
- 47% of drivers reported using the system sometimes;
- The reason for not using the fare all the time relating to the driver's assessment of the passenger(s) for likelihood of fare evasions and for the length of the journey;
- Operator support was positive for the program;
- It was noted that pre-paid fares were lawful before this program but greater public awareness had assisted in its acceptance;
- Operators stated there was a clear reduction in levels of fare evasion since this program had operated.

An analysis of offence reports to Tasmania police for the period 18 January 2015 to 18 February 2015, being the one month period directly before the inquest, reveals 14 reports concerning fare evasion, four involving actual or threatened violence, and all, except one, occurring between the hours of 12.00am -6.00am.

David Hope noted that there is currently legislation in Tasmania that allows for drivers to seek a deposit from customers prior to the journey (Regulation 61(3) of the *Taxi Regulations 2008*). However, it appears that this discretionary provision is rarely used except on very long journeys. Mr Hope stated that there is no current research or policy review regarding fare evasion in Tasmania. He is aware of the mandatory pre-paid fare program in Victoria but was unaware that it had been evaluated by the Monash University. He agreed the findings of that program would likely be

applicable to Tasmania. He indicated surprise at the level of fare evasion in Tasmania as reported by Mr Burdon and by police data. His evidence allows me to conclude that there is no avenue within State Growth currently available to collect such data and the problem had not been highlighted to him as a particular issue.

***Comments:***

Taxi fare evasion is a large and costly problem for the taxi industry in Tasmania. Fare evasion in Tasmania appears to be concentrated between the hours of 10pm and 5am daily. The Hobart Waterfront appears to have a high rate of or initiation of fare evasion. It occupies significant police resources in responding to regular incidents.

It is likely that many incidents of fare evasion are not reported by drivers and operators due to the lost work time in assisting police in the investigation. Further, it appears that when matters are reported to police various difficulties of a similar nature result in charges often not being laid. Fare evasion and the safety of drivers and passengers are inevitably linked. Three articles that were tendered in evidence describe the circumstances of three deaths of young males occurring in recent years (in other states) whilst exiting taxis with the intention of evading the fare.

The matter is one that concerns the community, as this inquest has shown. It is appropriate that a response to the problem is considered.

There are no current avenues for authorities to gather relevant information and therefore to commence consideration of a response to the problem.

The evaluation study from Victoria is a positive and successful program. It has had a direct impact on reducing fare evasion and safety issues for drivers. It is widely supported by drivers and operators.

Taxi travel is the only form of public passenger transport in Tasmania that does not require pre-payment before travel. It does not appear that there is any reason to maintain this historical situation when there are compelling safety and economic reasons to change it at least in respect of the high risk periods of the day.

A mandatory pre-paid fare regime would have prevented the majority of matters reported in Tasmania over the one month period as outlined above.

A mandatory pre-paid fare regime would have prevented the circumstances arising that led to Jayden's death.

***Recommendations regarding fare evasion***

I **recommend** that relevant government authorities, in conjunction with all stakeholders, implement a trial program of mandatory pre-paid taxi fares between the hours of 10pm and 5am, with a view to evaluation of the program and consequent implementation of a regime of mandatory pre-paid taxi fares.

**Conclusion**

Very sadly, this inquest highlights the tragic consequences of the over-consumption of alcohol by young people and their subsequent engagement in risk taking behaviour. It is simply a tragedy that a young man has lost his life by reason of such senseless behaviour. Coroners have warned repetitively of the consequences of

alcohol and risk-taking behaviour. Young persons, in particular, must be aware that fatalities occur as a result of the combination of the two factors.

In particular, the evidence demonstrates that a warning is appropriate as to the risks of serious injury inherent in exiting a moving vehicle, particularly at speeds in excess of 20 km/h.

I am grateful to Constable Shane Leek for his coronial investigation and report. I am also most grateful to Senior Constable Kelly Cordwell and Constable Melanie Redburn for their efforts in presenting the further forensic evidence and crash investigation evidence in the period leading to the inquest.

I particularly acknowledge the outstanding assistance of Sergeant Genevieve Hickman in her role as counsel assisting the coroner, including in the further investigation of the matter.

Finally, I commend David Nichols for his calm and helpful assistance at the scene.

I extend my sincere condolences to Mrs Field, and Jayden's family and loved ones.

Dated: 23 December 2015 at Hobart in the State of Tasmania.

**Olivia McTaggart**  
**Coroner**